



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LGB*
DATE: January 22, 2013
SUBJECT: Troy Police Officers Association v. City of Troy and Troy Employees Retirement System Board of Trustees

Enclosed please find a copy of a lawsuit that was filed on January 9, 2013 by the Troy Police Officers Association (TPOA) against the City of Troy and the Troy Employees Retirement System Board of Trustees. This is a lawsuit seeking injunctive relief, and not necessarily damages against the City. Specifically, TPOA is seeking an order that would prevent the Troy Employees Retirement System Board of Trustees from considering the disability retirement request filed by the Police Chief on behalf of former Troy police officer Todd Michael, who has been on leave without pay status since January 2010. The initial hearing in this case was scheduled for January 16, 2013, so our office has already responded to the lawsuit.

A resolution formally authorizing our office to defend this case is proposed for your consideration. The interests of the City and the Troy Employees Retirement System Board of Trustees appear to be aligned at this point, so joint representation is allowed. If you have any questions, please let me know.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

**TROY POLICE OFFICERS
ASSOCIATION (TPOA),**

PLAINTIFF,

Case No 2013-

181524

CL

v.

Hon:

**CITY OF TROY and the
CITY OF TROY RETIREMENT BOARD,**

DEFENDANTS.

M. Catherine Farrell (P35248)
Attorney for Plaintiffs
Pierce, Farrell, Tafelski & Wells, PLC
2525 S. Telegraph Ste 100
Bloomfield Hills, MI 48302
248 852 1365
Catherine@farrellaw.com

NOTICE OF HEARING TO SHOW CAUSE

Now comes the Plaintiff, the Troy Police Officers Association (TPOA) by and through its counsel, Pierce, Farrell, Tafelski & Wells, PLC and gives Notice of a Hearing to show cause why a preliminary injunction should not be issued as requested by the Plaintiff, scheduled for January 16, 2013 at 9:30 am before the Honorable _____ at the Oakland County

MARTHA D. ANDERSON

Circuit Court located at 1200 North Telegraph Road, Pontiac, MI 48341-0404.

Pierce, Farrell, Tafelaki & Wells PLC

Dated: January 8, 2012

By: /s/ M. Catherine Farrell
M. Catherine Farrell (P35248)
Attorneys for the Plaintiff Troy
Police Officers Association
2525 S. Telegraph Rd Ste 100
Bloomfield Hills, MI 48302
248 852-1365
Catherine@farrellsq.com

JUDGE MARTHA D. ANDERSON
OAKLAND COUNTY 6TH CIRCUIT COURT

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Catherine Farrell	SHERYL - JUDICIAL CLERK
COMPANY:	DATE:
	1/9/2013
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
248 852 5161	5
PHONE NUMBER:	SENDER'S TELEPHONE NUMBER:
	248 858 7954
NR:	SENDER'S FAX NUMBER:
2013-131524-CL	248 858 7992
Troy Police Officers Assoc v. City of Troy	

URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

PLEASE FIND ATTACHED A TRUE COPY OF THE TRO AND THE NOTICE OF HEARING BOTH FILED BY THE COURT. PLEASE NOTE THE DATE AND TIME ON THE NOTICE OF HEARING AS JANUARY 16, 2013 @ 8:30AM. PLEASE FILE A PRECISE FOR THAT DATE AND TIME.

THANK YOU.

1200 N. TELEGRAPH RD, PONTIAC, MI 48341
248-858 7994

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TROY POLICE OFFICERS
ASSOCIATION (TPOA),

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M. Catherine Farrell (P35248)
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2525 S. Telegraph Ste 100
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248 852 1365
Catherine@farrellesq.com

VERIFIED COMPLAINT

Now comes the Plaintiff, the Troy Police Officers Association, TPOA, by and through its counsel, Pierce, Farrell, Tafelski & Wells, PLC and for its **Verified Complaint** state as follows:

PARTIES

1. The Plaintiff is the exclusive collective bargaining agent for all uniform police office below the rank of sergeant employed by the Defendant City of Troy.

2. The City of Troy is a public employer and is a party to a collective bargaining agreement with the Plaintiff, the Troy Police Officers Association.
3. The City of Troy Employee Retirement Board is an authorized board of the City of Troy and is the independent Board which hears and processes retirement requests from employees employed by the City of Troy.

JURISDICTION

4. Chapter 10 of the City Code sets forth in detail the rights duties and obligations of the Retirement Board and the employees employed by the City of Troy. A copy of Chapter 10 of the Troy City Code is attached thereto as Exhibit 1.
5. The City of Troy and the City of Troy Retirement Board are located in Oakland County.
6. Michigan Court Rules 3.310(B) provides jurisdiction to this court to issue a temporary restraining order "if immediate and irreparable injury, loss or damage will result to the applicant from the delay required to effect notice..."

FACTS

7. On March 30, 2012, Plaintiff filed a lawsuit seeking among other things an Order of Mandamus directing/ordering the City of Troy and the City of Troy Public Act 78 Civil Service Commission to hear the case of police officer Todd Michael, a member of the TPOA.
8. The right to an Act 78 Commission is a step in the TPOA grievance procedure which is embodied in the collective bargaining agreement.

9. Based upon a communication from the Defendant City of Troy HR Director the Act 78 Commission refused to hear the case of Officer Todd Michael.
10. Upon invitation of the Act 78 Commission, on or about January 19, 2012, that it would hear the case if ordered to do so by a court of competent jurisdiction, the Plaintiff filed a lawsuit seeking an order from a court of competent jurisdiction to order the Act 78 Commission to hear the case.
11. On or about December 5, 2012, the Honorable Martha D. Anderson heard the case and issued a bench decision ordering the Act 78 Commission to hear the case of Officer Todd Michael.
12. On or about December 27, 2012, the City of Troy appealed the decision of the court which ordered the Act 78 Commission to hear the case regarding Officer Todd Michael. The appeal number in the Court of Appeals is 314013.
13. By a memorandum dated January 2, 2013, the Chief of Police, Gary Mayer unilaterally made a request of the City of Troy Retirement Board to hear his request for the forced retirement of Officer Todd Michael. Attached hereto as Exhibit 2 is a copy of the January 2, 2013 Memorandum, and partially completed retirement request.
14. Chief of Police Gary Mayer is a named Defendant in the Federal litigation involving Officer Todd Michael.
15. The forced retirement is an attempt to avoid and subvert the order of this court for the Act 78 Commission to hear the matter involving Officer Todd Michael. The TPOA and Officer Todd Michael, as an employee and as a member of the TPOA bargaining unit,

will be irreparably damaged by the unilateral effort to force Officer Todd Michael into a forced retirement.

16. Once officer Michael is forced into retirement he will no longer be a member of the TPOA; he will not be entitled to be represented by the TPOA in matters pertaining to his employment; he will no longer be subject to the terms and conditions of the existing collective bargaining agreement, and he will no longer be entitled to a hearing as a rothied officer before the Act 78 Civil Service Commission.

WHEREFORE the Plaintiff, as the exclusive collective bargaining agent for uniform police officers below the rank of sergeant, respectfully requests the court issue a *ex parte* temporary restraining order, restraining the Defendant City of Troy and the City of Troy Retirement Board from processing any request by chief of police Gary Mayer to effectuate the involuntary retirement of Officer Todd Michael until there is a full and complete hearing on the merits of the Act 78 Commission case and an order to show cause why a preliminary injunction should not issue.

I affirm that the facts as set forth above are true to the best of my knowledge, information and belief.


Michael Geise, President of the TPOA

Respectfully submitted,

Pierce, Farrell, Tafelski & Wells, PLC

Dated: January 8, 2012

By: /s/ M. Catherine Farrell

M. Catherine Farrell (P35248)
Attorneys for the Plaintiff Troy
Police Officers Association
2525 S. Telegraph Rd Ste 100
Bloomfield Hills, MI 48302
248 852-1365
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EXHIBIT 1

Chapter 10 - Employees Retirement System

1. **Definitions.** The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:
 - A) **Accumulated contributions** means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's deposit fund, together with regular interest thereon.
 - B) **Beneficiary** means any person, except a retirant, who is in receipt of, or who has entitlement to, a pension or other benefit, payable from the funds of the retirement system.
 - C) **Board of trustees or board** means the board of trustees provided for in this chapter.
 - D) **Compensation** means the salary or wages paid an employee for personal services rendered by him to the city. The term shall not include allowances for clothing, equipment, travel and similar items, nor shall it include the payment of sick or vacation leave that is made because of termination or retirement.
 - E) **Council** means the legislative body of the City of Troy.
 - F) **Credited service** means the total of a member's service, to the extent such service is credited to him by the board of trustees.

(Rev. 07-26-1993)
 - G) **Employee** means any person in the employ of the city.
 - H) **Final average compensation** means the average of the annual compensation paid a member during the three (3) highest calendar years of his service contained within the last ten (10) calendar years, immediately preceding termination of his last employment with the City.

(Rev. 11-06-2000)
 - I) **Member** means any employee who is included in the membership of the retirement system.
 - J) **Pension** means an annual amount payable by the retirement system throughout the future life of a person or for a temporary period as provided in this chapter. All pensions shall be paid in equal monthly installments.
 - K) **Pension reserve** means the present value of all payments to be made on account of any pension, computed on the basis of such mortality and other

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tables of experience, and regular interest, as the board of trustees shall from time to time adopt.

- L) Regular interest means such rate of interest per annum, compounded annually, as the board of trustees shall from time to time adopt.
- M) Retirant means any member who retires with a pension payable from funds of the retirement system.
- N) Retirement means a member's withdrawal from the employ of the city with a pension payable from the funds of the retirement system.
- O) Retirement system or system means the city employees retirement system created and established by this chapter.
- P) Service means personal service rendered to the city by an employee of the city.

(Rev. 02-11-1991)

2. **Board of Trustees.** The Board of Trustees is vested with the power and authority to administer, manage and operate the retirement system, and to construe and make effective the provisions of this Chapter. The Board shall consist of eight trustees as follows:

(Rev. 03-01-2004)

- A) The City Manager, by virtue of his position.
- B) The Assistant City Manager/Finance & Administration, by virtue of his position.

(Rev. 11-06-2000)

- C) A member of Council selected by the Council.

(Rev. 02-28-1994)

- D) A citizen, who is an elector of the City, and who is not a member, retirant or beneficiary of the retirement system, and who is not a member of the Council, to be appointed by the Council.

(Rev. 09-11-1978)

- E) Three members of the retirement system to be elected by the members of the system in accordance with such rules and regulations as the Board shall

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from time to time adopt to govern such elections.

- F) A retiree member in the Defined Benefit plan, who shall be appointed by the City Council, and shall serve as a non-voting member.
- G) Of the five employee members, two must be in the Defined Benefit plan. A minimum of two of the five member trustees, as set forth in paragraphs A, B or E, must be a member of the Defined Benefit plan.

(Rev. 03-01-2004)

- 3. **Terms of Office.** The regular term of office for the appointed citizen, the 3 member trustees, and the Council trustee, shall be 3 years.

(Rev. 02-28-1994)

Vacancy of Board.

- 3.4 If a member trustee leaves the employ of the City he shall be considered to have resigned from the Board and the vacancy shall be filled for the unexpired portion of the term.

(Rev. 02-11-1991)

Board Quorum, Vote, Meetings, Proceedings.

- 3.5 Four trustees shall constitute a quorum at any meeting of the Board of Trustees. Each trustee shall be entitled to one vote on each question before the Board and at least four concurring votes shall be required for a decision by the Board. The Board shall hold meetings regularly, at least one in each quarter year, and shall designate the time and place thereof. The Board shall adopt its own rules of procedure.

(Rev. 02-11-1991)

Board Chairman, Retirement System Officers, Employees.

- 3.6 The Board of Trustees is vested with the power and authority to administer, manage and operate the retirement system, and to construe and make effective the provisions of this Chapter. The Board shall consist of eight trustees as follows:
 - A) The Board of Trustees shall designate from its own number a Chairman and a Vice-Chairman.
 - B) The City Treasurer shall be the Treasurer of the Retirement System.

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- C) The City Manager or his/her designee shall be the Administrative Officer and serve as secretary of the Retirement System and he/she shall be the custodian of its money and investments.

(Rev. 07-25-2011)

- D) The City Attorney shall be the Legal Advisor to the Board of Trustees.
- E) The Board of Trustees shall designate an actuary who shall be the Technical Advisor to the Board and who shall perform such other duties as are required of him under this Chapter.
- F) The Board of Trustees may employ such other services as are approved by the City Manager and authorized by the Council.

(Rev. 06-07-1999)

Records, Annual Reports.

- 3.7 The Administrative Officer shall keep, or cause to be kept, such data as shall be necessary for an actuarial valuation of the Retirement System.

(Rev. 09-23-1974)

Experience Tables, Regular Interest, Adoption Of.

- 3.8 The Board of Trustees shall from time to time adopt such mortality and other Tables of Experience, and a rate of regular interest, as are required in the proper operation of the Retirement System; provided that no such rate of regular interest shall exceed seven percent per annum, compounded annually.

(Rev. 02-04-1980)

- 4. **Membership.** The membership of the Retirement System shall include only those persons who are classified as full time on the records of the Human Resources Department of the City, and shall specifically exclude but not be limited to the following: (1) any employee who is employed by the City in a position normally requiring less than 1,000 hours of work per annum, (2) any person whose services are compensated on a contractual or fee basis, (3) volunteer firefighters as such, (4) elected officials of the City, and (5) employees classified as part time, seasonal or temporary, on the records of the Human Resources Department of the City regardless of the number of hours actually worked by the employee in any calendar year.

In any case of doubt as to the membership status of any employee, the Board shall decide the question.

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(Rev. 01-22-2001)

Termination of Membership.

- 4.2 Should any member cease to be employed in a position covered by the Retirement System he shall thereupon cease to be a member and his credited service at that time shall be forfeited, unless otherwise provided in this Chapter. If he is re-employed by the City in a position covered by the system he shall again become a member. Should his re-employment occur within a period of 5 years from the date he last ceased to be a member, his credited service last forfeited by him shall be restored to his credit, provided he immediately returns to the Members Deposit Fund the amount, if any, he withdrew therefrom, together with regular interest thereon from the date of withdrawal to the date of repayment. Upon a member's retirement, he shall cease to be a member of the system.

(Rev. 02-11-1991)

Service Credit.

- 4.3 The Board shall fix and determine by appropriate rules and regulations the amount of service to be credited any member; provided, that in no case shall less than 10 days of service rendered by him in any calendar month be credited as a month of service, nor shall less than 10 months of service rendered by him in any calendar year be credited as a year of service, nor shall more than 1 year of service be credited any member for all service rendered by him in any calendar year.

(Rev. 08-07-1967)

- 4.4 **Military Service Credit.** If an employee of the City, who while employed by the City, enters the Armed Forces of the United States during any period of compulsory military service, such armed service shall be credited him as City service; provided, that (1) he re-enters the employ of the City, in a position covered by this retirement system, within 6 months from and after termination of such armed service actually required of him, and (2) he pays into the Members Deposit Fund the amount, if any, he may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment, and (3) in no case shall any member be credited with more than 5 years of service for all such armed service rendered by him. In any case of doubt as to the period to be so credited any member, the Board of Trustees shall have final power to determine such period.

(Rev. 02-11-1991)

- 4.5 **Additional Service Credits.** Any person (having been first employed by the City prior to January 22, 2001) who is in the active employ of the City as of the date of enactment of this provision, and who currently is or has previously been excluded from membership in the Retirement System pursuant to the provisions

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of Section 4(1) (solely due to being employed by the City in a "part time" position normally requiring less than 1,000 hours of work per annum), shall be subject to the following additional provisions:

- A) Any such employee who as of the date of enactment of this provision has completed five (5) or more consecutive years of service in such part time position, shall immediately be eligible to become a member of the Retirement System and receive credit for such service; provided that during each such year he or she performed services in at least 10 months and completed at least 1,000 hours of work, and that such consecutive period of service is continuing as of the date of enactment of this provision.
- B) Any such employee who after the date of enactment of this provision (and prior to January 21, 2006), completes a minimum of five (5) consecutive years of service in such part time position, shall be eligible to become a member of the Retirement System and receive credit for such service, effective as of their completion of such period of service; provided that during each such year he or she performed services in at least 10 months and completed at least 1,000 hours of work.
- C) Any such employee who currently is or otherwise becomes a member of the Retirement System pursuant to Section 4 (due to a change in job classification), and who previously was excluded from membership as a part time employee, shall be eligible to receive credit for years of service completed in such part time position, effective as of the later of the enactment of this provision or their otherwise becoming a member; provided that only the consecutive period of service (during each year of which he or she performed services in at least 10 months and completed at least 1,000 hours of work) that commenced prior to January 22, 2001, and that was continuing at the date they became a member shall be so credited.
- D) An employee referred to in (A) or (B) above, shall continue to be a member and receive credit for service only for such period as he or she continues to perform services in at least 10 months complete at least 1,000 hours of work in any year. An employee referred to in (C) above, shall continue to be a member and receive credit for service only for such period that he or she continues to be employed in a position that otherwise qualifies them for membership pursuant to the provisions of Section 4. All such employees shall be subject to the break-in-service provisions of Section 4.2, and the vesting requirements of Sections 6 and 57. In no event shall any year of service be counted more than once pursuant to these provisions.
- E) If the first period for which an employee receives service credit hereunder

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occurs prior to January 1, 1998, such credited service shall be applied towards determining the amount of pension under Section 6.1 to which the employee may become entitled upon retirement; provided that the value of such pension may be transferred to the Defined Contribution Plan in accordance with such procedures as the Board may determine. If the first period for which an employee receives service credit hereunder occurs on or after such date, the Board shall determine (and the City shall contribute) those amounts that would otherwise have been required to be contributed on such employee's behalf under Section 55 with respect to such years.

- F) Notwithstanding any provision in this Chapter to the contrary, for purposes of calculating the amount of benefit (under Section 6.1) or contribution (under Section 55) to which a member is entitled with respect to each year of credited service referred to in (A), (B), (C) and (D) above, the benefit or contribution otherwise due pursuant to this Chapter shall be prorated for each such year based on the actual number of hours worked during such year, as determined from the following schedule:

<u>Hours Worked</u>	<u>Years of Service</u> <u>Credit</u>
1,000 to 1,499	50%
1,500 to 1,999	75%
2,000 and over	100%

- G) In order to become a member and/or receive service credits in accordance with this provision, an eligible employee must elect (within six (6) months of the date of enactment of this provision) to purchase such service credits, by agreeing in writing to contribute to the Retirement System those amounts that would otherwise have been required to be contributed by the employee under Section 9.1 or Section 55 with respect to such years, along with such interest as the actuary and/or Board shall determine is appropriate. Such amounts shall be deducted from payroll in accordance with such procedures as the Board may determine, provided that all amounts due shall be contributed into the Retirement System no later than the time the employee terminates his employment with the City. Failure to contribute such amounts in a timely manner will result in forfeiture of such service credits.

(Rev. 01-14-2002)

- 4.6 Prior Governmental Retirement Service. A member of the Employees Retirement System may be eligible for prior governmental retirement service credit if all of the following requirements are satisfied:

- A) The member must be still actively employed by the City of Troy.

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- B) The member must have a minimum of 60 months of credited service acquired as a member of the Troy Employees Retirement System.
- C) The member must have attained the age requirements for the Troy Employees Retirement System.
- D) The member must have previously acquired credited service as a member of another official governmental retirement system. If all of the above requirements are satisfied, then a member who has not yet met the service requirements for the Troy Employees Retirement System shall be entitled to use his or her credited service from another official governmental retirement system for eligibility purposes only.

(Rev. 10-07-2002)

5. **Voluntary Retirement.** Any member, who has attained age 55 years and has 10 or more years of credited service in force, may retire upon his written application filed with the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

- 5.1 **Normal Retirement.** Normal Retirement age is 65 years. If a member who is separated from City employment on or after his attainment of age 65 years has 10 or more years of credited service in force, he shall be retired.

(Rev. 11-07-1988)

6. **Deferred Retirement.** In the event a member who has 10 or more years of credited service leaves the employ of the City before he is eligible to retire, he shall be entitled to a pension computed according to the provisions of this chapter in force at the time of said member's separation from City employment; provided, that he does not withdraw his accumulated contributions from the Members Deposit Fund. His said pension shall begin the first day of the calendar month next following the month in which he files his application for same with the Board of trustees on or after his attainment of age 60 years.

(Rev. 04-20-1992)

- 6.1(A) **Straight Life Pension.** Upon a member's retirement, as provided in this Chapter, if he has less than 27 years service, he shall receive a straight life pension equal to a percent of an amount computed by multiplying the number of years, and fraction of a year, of his credited service by 2.25 percent of his final average compensation listed below. Such percent shall be equal to 70 percent increased by 1/2 of 1 percent for each full month by which the member's age at the time of retirement exceeds 55 years. Provided, in no event shall such percent exceed 100 percent,

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and, provided that in case of disability retirement or death pension the percent shall be 100 percent. For Troy Command Officers Association (TCOA) and Troy Police Officers Association (TPOA) members, the percent of Final Average Compensation (FAC) will be 2.8% for the first 25 years and 1% per year thereafter, with a cap of 75% of final average compensation.

(Rev. 08-20-2007)

- 6.1(B) Age and Service Retirement. Upon a member's retirement, as provided in this Chapter, he shall receive a straight life pension equal to an amount computed by multiplying the number of years, and fraction of a year, of his credited service by 2.25%. For TCOA and TPOA members, the percent of Final Average Compensation (FAC) will be 2.8% for the first 25 years and 1% per year thereafter with a cap of 75% of final average compensation.

(Rev. 08-20-2007)

- 6.1(C) A member who has 27 or more years service may retire on or after his attainment of age 50. TPOA and TCOA, and Troy Fire Staff Officers Association (TFSOA) members retiring after July 1, 1998 may retire as an age and service retirement after the attainment of 25 years of service. Classified and Exempt and Michigan Association of Police (MAP) members may retire as an age and service retirement after the attainment of age 55 and 25 years of service.

(Rev 08-20-2007)

- 6.1(D) Supplemental Retirement. All members excluding TPOA and TCOA shall receive an additional pension from age 50 to age 62 to equal the amount it would have been if the percentages in the formulas in subsections A or B above were .25% greater.

(Rev. 03-01-2004)

- 6.2 Terminal Payments. If a retirant dies before he has received in straight life pension payments an aggregate amount equal to his accumulated contributions standing to his credit in the members deposit fund at the time of his retirement, the difference between his accumulated contributions and the aggregate amount of straight life pension payments received by him shall be paid to such person as he shall have nominated by written designation duly executed and filed with the board. If there be no such designated person surviving the retirant, the difference, if any, shall be paid to his estate.

(Rev. 02-11-1991)

Pension Options.

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- 6.3 Prior to the receipt of his first retirement payment, but not thereafter, a member may elect to receive his pension as a straight life pension payable throughout his life; or, he may elect to receive the actuarial equivalent, at that time, of his straight life pension in a reduced pension payable throughout his life, and nominate a beneficiary, in accordance with the provisions of Option A thru D as set forth below:

Option A. Joint and Survivor Pension: Upon the death of a retirant who elected Option A, his reduced pension shall be continued throughout the life and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Board of Trustees.

Option B. Modified Joint and Survivor Pension: Upon the death of a retirant, who elected Option B, one-half of his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Board of Trustees.

Option C. Joint and Survivor Pension (pop-up A): Upon the death of a retirant who elected Option C, his reduced pension shall be continued throughout the life and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Board of Trustees. If the selected beneficiary predeceases the retirant, the pension shall revert to a straight-life pension payable throughout the remainder of his life.

Option D. Modified Joint and Survivor Pension (pop-up B): Upon the death of a retirant who elected Option D, one-half of his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Board of Trustees. If the selected beneficiary predeceases the retirant, the pension shall revert to a straight-life pension payable throughout the remainder of his life.

(Rev. 11-02-1987)

- 7.1A Upon the application of an Exempt, Classified, or Michigan Association of Police (MAP) member, or his department head, who is below age 60 or who does not otherwise qualify for retirement, who (1) is in the employ of the City, (2) has 10 or more years of credited service [for American Federation of State, County, and Municipal Employees (AFSCME) employees hired after 2/12/96, or Michigan Association of Police (MAP) members who have 5 or more years of credited services as of 8/7/1995)], (3) becomes totally and permanently incapacitated for full time work, by reason of a personal injury or disease, and is in receipt of disability benefits from Social Security, or has received a favorable determination letter with a current effective date for the commencement of disability benefits under Social Security, may be retired by the Board of Trustees; provided, that after a medical examination of the member made by or under the direction of a Medical

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Committee consisting of 2 physicians, 1 of whom shall be named by the Board, and 1 by the member, the said Medical Committee reports to the Board, in writing, (1) that the member is mentally or physically totally incapacitated for full time work, (2) that his incapacity will probably be permanent, and (3) that the member should be retired. In the event that the 2 physicians constituting the Medical Committee do not agree in their findings, then the Board may, in its discretion, appoint a third physician to examine the member and based upon the report, in writing, of the third physician, the Board may retire the member.

The 10 years credited service requirement contained in this section shall be waived in the case of a member whom the Board finds (1) to be totally and permanently incapacitated for full time work as a natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of the City and (2) to be in receipt of workmen's compensation on account of his disability arising out of and in the course of his City employment.

(Rev. 03-01-2004)

- 7.1B Upon the application of an American Federation of State, County, and Municipal Employees (AFSCME), Troy Police Officers Association (TPOA), or Troy Command Officers Association (TCOA) member, or his department head, who is below age 60 or who does not otherwise qualify for retirement, who (1) is in the employ of the City, (2) has 5 or more years of credited service, and (3) becomes totally and permanently incapacitated for duty in the employ of the City, by reason of a personal injury or disease, may be retired by the Board of Trustees; provided, that after a medical examination of the member made by or under the direction of a Medical Committee consisting of 2 physicians, 1 of whom shall be named by the Board, and 1 by the member, the said Medical Committee reports to the Board, in writing, (1) that the member is mentally or physically totally incapacitated for duty in the employ of the City, (2) that his incapacity will probably be permanent, and (3) that the member should be retired. In the event that the 2 physicians constituting the Medical Committee do not agree in their findings, then the Board may, in its discretion, appoint a third physician to examine the member and based upon the report, in writing, of the third physician, the Board may retire the member. The 5 years credited service requirement contained in this section shall be waived in the case of a member whom the Board finds (1) to be totally and permanently incapacitated for duty in the employ of the City as a natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of the City and (2) to be in receipt of workmen's compensation on account of his disability arising out of and in the course of his City employment.

(Rev. 03-01-2004)

7.2 Disability Pension

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- A) Upon retirement of a member on account of disability, as provided in this Chapter, he shall receive a pension computed in accordance with the provisions of this Chapter; provided, that his straight life disability pension shall not be less than the amount it would be if he had 10 years of credited service.
- B) Troy Police Officers Association (TPOA) Duty Disability. Upon the retirement of a member of the Troy Police Officers Association (TPOA) on account of disability, as provided in this Chapter, he shall receive a pension of not less than two-thirds of his final average compensation during the period he is in receipt of workmen's compensation on account of his disability arising out of and in the course of his City employment.

(Rev. 03-01-2004)

Re-examination of Disability Retirant

- 7.4 At least once each year during the first 5 years following a member's retirement on account of disability, and at least once in every 3 year period thereafter, the Board of Trustees may, and upon the retirant's application shall, require any disability retirant who has not attained age 55 years undergo a medical examination to be made by or under the direction of a physician designated by the Board. If the said retirant refuses to submit to such medical examination in any such period, his disability pension may be suspended by the Board until his withdrawal of such refusal. Should such refusal continue for 1 year all his rights in and to a disability pension may be revoked by the Board. If upon such medical examination of said retirant, the said physician reports to the Board that the said retirant is physically able and capable of resuming employment with the City he shall be returned to City employment and his disability pension shall terminate; provided, that the report of the said physician is concurred in by the Board. In returning the said retirant to City employment reasonable latitude shall be allowed the City in placing him in a position commensurate with his type of work and compensation at the time of his retirement.

(Rev. 05-10-1965)

- 7.5 A disability retirant who is returned to City employment shall again become a member of the retirement system. His credited service at the time of his retirement shall be restored to full force and effect. He shall be given service credit for the period he was in receipt of workmen's compensation on account of his disability arising out of and in the course of his City employment; otherwise he shall not be given service credit for such period.

(Rev. 08-07-1967)

- 7.6 If a disability retirant, who has not attained age 55 years become engaged in gainful occupation, business, or employment paying him more than the difference

Chapter 10 - Employees Retirement System

between his annual rate of compensation at the time of his retirement and his disability pension, his pension shall be reduced to an amount which together with the amount so earned by him shall equal but not exceed his annual rate of compensation. Should the retirant's earnings change, the reduction of his pension shall be adjusted accordingly.

(Rev. 02-11-1991)

8. **Duty Death Pension.** If a member dies as the result of personal injury or disease arising solely and exclusively out of and in the course of his employment with the City, and such death, or injury or disease resulting in such death, be found by the Board of Trustees to have been the result of his actual performance of duty in the employ of the City, the benefits provided in this section shall be paid, subject to the condition that workmen's compensation becomes payable on account of the death of the member.

- A) His widow shall receive a pension computed as if the member had (1) retired the day preceding the date of his death, notwithstanding that he might not have been otherwise eligible to retire, (2) elected Option A and (3) nominated his widow as beneficiary; provided, that the pension shall not be less than 25 percent of the member's final average compensation. For Troy Command Officers Association (TCOA) and Troy Police Officers Association (TPOA), and Troy Command Officers Association (TCOA), and Troy Fire Staff Officers Association (TFSOA) members retiring after July 1, 1998, the percent will be 50 instead of 25.

(Rev. 03-01-2004)

- B) If there be no widow, or if the widow's pension shall cease, for any reason, the member's dependent children shall share equally in a pension equal to 25 percent of the member's final average compensation. Each child's pension shall terminate when the child has died, married, or attained age 18 years.
- C) As used in this section, the term "Widow" means any person to whom the member was married at the time his employment with the City is terminated.
- 8.1 **Non-Duty Death Pension.** If any member who has 10 or more years of credited service and dies while in the employ of the City, his or her spouse shall receive a pension computed in the same manner in all respects as if the member had (1) retired the day preceding the date of death, notwithstanding that the member might not have been otherwise eligible to retire, (2) elected Option A, and (3) nominated the member's spouse as beneficiary.

(Rev. 01-23-1995)

Chapter 10 - Employees Retirement System

9. **Members Deposit Fund.** The Members Deposit Fund shall be the fund in which shall be accumulated, at regular interest, the contributions of members, and from which shall be made refunds and transfers of accumulated contributions, as provided in this Chapter.

(Rev. 08-07-1967)

- 9.1 **Members Contributions.** A members contribution to the retirement system shall be based on the following percent of compensation: MAP 1.50; TPOA; 4.00, TCOA 4.00; Classified and Exempt 1.50; American Federation of State, County, and Municipal Employees (AFSCME) 1.50; and TFSOA 3.00.

(Rev. 08-20-2007)

- 9.2 **Payroll deductions.** The contributions provided for in this Chapter shall be deducted from the compensations of each member on each and every payroll, for each and every payroll period, from the date of his entrance in the retirement system to the date his City employment terminates. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of his compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by him during the period covered by such payment, except as to benefits provided by this Chapter. When deducted, each of said contributions shall be credited to the member's individual account in the Members Deposit Fund.

(Rev. 04-20-1992)

- 9.5 **Contributions Transferred.** Upon a member's retirement, his accumulated contributions standing to his credit in the Members Deposit Fund shall be transferred to the Retirement Reserve Fund. Except as otherwise provided in this Chapter, at the expiration of a period of years from and after the date a member ceases to be an employee of the City, any balance standing to his credit in the Members Deposit Fund, unclaimed by the member or his legal representative, shall be transferred to the Income Fund.

(Rev. 02-11-1991)

Refund of Member's Contributions.

- 9.6 Should any member cease to be employed by the City and not be entitled to a pension payable from funds of the Retirement System, he shall be paid the balance standing to his credit in the Members Deposit Fund, provided he files his written request for same.

(Rev. 04-20-1992)

Chapter 10 - Employees Retirement System

- 9.7 Upon the death of a member, if no pension becomes payable on account of his City employment, the balance standing to his credit in the Members Deposit Fund at the time of his death shall be paid to such person or persons as he shall have nominated by written designation duly executed and filed with the Board of Trustees. If no designated person or persons survives the member, his accumulated contributions shall be paid to his estate.

(Rev. 02-11-1991)

Pension Reserve Fund

- 10.1 The Pension Reserve Fund is hereby created. It shall be the fund in which shall be accumulated the contributions made by the City to the retirement system and from which shall be made transfers of pensions reserves, as provided in this section.
(Rev. 11-23-1964)

- 10.2 Upon the basis of such mortality and other tables of experience, and regular interest, as the Board of Trustees shall from time to time adopt, the actuary shall annually compute the pension reserves or service rendered and to be rendered by members, and the pension reserves for pensions being paid retirants and beneficiaries. The pension reserve liabilities so determined shall be financed by annual City contributions to be appropriated by the Council; said contributions:

- A) for member's current service shall be a percent of their annual compensations which will produce an amount which if paid annually by the City during their future service will be sufficient, at the time of their retirement, to provide the pension reserves, not financed by members' future contributions, for the portions of the pensions to be paid them based upon their future service; and
- B) for members' accrued service shall be a percent of their annual compensations which will produce an amount which if paid annually by the City over a period of years, to be determined by the Council, will amortize, at regular interest, the unfunded pension reserves for the accrued service portions of the pensions to which they may be entitled upon retirement; and
- C) for pensions being paid retirants and beneficiaries shall be a percent of the annual compensations of members which will produce an amount which if paid annually by the City over a period of years, to be determined by the Council, will amortize, at regular interest, the unfunded pension reserves for pensions being paid retirants and beneficiaries.

(Rev. 11-2-1987)

- 10.3 In the event the amount appropriated in the budget in any fiscal year is insufficient to pay in full the amounts due in said year to all retirants and beneficiaries of the

Chapter 10 - Employees Retirement System

retirement system, the amount of such insufficiency shall thereupon be provided by the City.

(Rev. 11-23-1964)

- 10.4 Upon the retirement of a member the difference between the pension reserve for the pension payable on his account and his accumulated contributions shall be transferred from the Pension Reserve Fund to the Retirement Reserve Fund.

- 10.5 **Retirement Reserve Fund.** The Retirement Reserve Fund shall be the fund from which shall be paid all pensions as provided in this Chapter. In the event a disability retiree returns to City employment, his pension reserve at that time shall be transferred from the Retirement Reserve Fund to the Members Deposit Fund and the Pension Reserve Fund in the same proportion as the pension reserve was originally transferred.

(Rev. 08-07-1967)

- 10.6 **Income Fund.** The Income Fund shall be the fund to which shall be credited all interest, dividends, and other income from investments of the retirement system; all transfers from the Members Deposit Fund by reason of lack of claimant; and all other moneys received by the retirement system, the disposition of which is not specifically otherwise provided for in this Chapter. The Board of Trustees may accept gifts and bequests. There shall be transferred from the Income Fund all amounts required to credit regular interest to the Members Deposit Fund, Retirement Reserve Fund, and Pension Reserve Fund. Whenever the Board determines that the balance in the Income Fund is more than sufficient to cover the current charges to the Fund, the Board may, by resolution provide for contingency reserves.

(Rev. 11-02-1987)

11. **Investment.** The Board of Trustees shall be the trustees of the funds of the retirement system and shall have full power to invest and reinvest such funds as permitted by State Law.

Restricted Use of Funds.

- 11.3 All moneys and investments of the Retirement System shall be held for the exclusive purpose of meeting the disbursements for pensions and other payments authorized by this Chapter and shall be used for no other purpose whatsoever.

(Rev. 11-06-2000)

Assets Not Segregated.

Chapter 10 - Employees Retirement System

- 11.4 The Members Deposit Fund, Pension Reserve Fund, Retirement Reserve Fund, Income Fund, and any other Funds created by the Board of Trustees shall be interpreted to refer to the accounting records of the Retirement System and not to the actual segregation of the assets of the System in the said Funds.

(Rev. 11-23-1964)

Allowance of Regular Interest.

- 11.5 The Board of Trustees shall, at the end of each fiscal year, allow and credit regular interest to the members' individual accounts in the Members Deposit Fund computed upon their individual balances at the beginning of such fiscal year; and to the mean balances for the year in the Pension Reserve Fund and the Retirement Reserve Fund. The amounts of interest so credited shall be charged to the Income Fund. In the event the balance in the Income Fund is not sufficient to cover the amounts of interest charged to it, the amount of such insufficiency shall be transferred from the Pension Reserve Fund to the Income Fund.

No Trustee Shall Gain From Investments.

- 11.6 Except as otherwise provided in this Chapter, no trustee and no employee of the City shall have any interest direct or indirect in the gains or profit arising from any investments made by the Board of Trustees. No person directly or indirectly, for himself or as an agent or partner of others, shall borrow any moneys or investments of the Retirement System, or in any manner use the same except to make current and necessary payments as are authorized by the Board. No such person shall become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the Board. Nothing contained herein shall be construed to impair the rights of any member, retirant, or beneficiary of the Retirement System to benefits provided by the system.

(Rev. 08-07-1967)

Method of Making Payments.

- 11.7 All payments from moneys of the Retirement System shall be made by the City Treasurer; all payments shall have been previously authorized by a specific or continuing resolution adopted by the Board.

(Rev. 09-23-1974)

Correction of Errors.

- 12.1 Should any change or error in the records of the City or the Retirement System result in any person receiving from the System more or less than he would have been entitled to receive had the records been correct, the Board of Trustees shall

Chapter 10 - Employees Retirement System

correct such error as far as is practicable shall adjust the payment of the benefit in such manner that the actuarial equivalent of the benefit to which such person was correctly entitled shall be paid.

(Rev. 11-23-1964)

Subrogation.

- 12.2 In the event a person becomes entitled to a pension or other benefit payable by the Retirement System as the result of an accident or injury caused by the act of a third party, the City shall be subrogated to the rights of the said person against such third party to the extent of the benefits to which the City pays or becomes liable to pay.

Assignments Prohibited.

- 12.3 The right of a person to a pension, to the return of accumulated contributions, the pension itself, any pension option, and any other right accrued or accruing to any member, retirant or beneficiary, under the provisions of this Chapter, and all moneys belonging to the Retirement System, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever and shall be unassignable, except as is specifically provided in this Chapter; provided, that if a member is covered by a group insurance or repayment plan participated in by the City, and should be permitted to, and elect to, continue such coverage as a retirant, he may authorize the Board of Trustees to have deducted from his pension the payments required of him to continue coverage under such group insurance or prepayment plan and he may authorize the withholding of State and Federal taxes as provided by law; provided further, that the City shall have the right of setoff for any claim arising from embezzlement by or fraud of a member, retirant, or beneficiary.

(Rev. 10-01-1979)

Fraud Penalty.

- 51 Whoever with intent to deceive shall make any statement or report required under this Chapter which is untrue, or shall falsify or permit to be falsified any record or records of the Retirement System shall be subject to punishment as provided in Chapter 1.

(Rev. 02-11-1991)

52. **Pension Suspended.** Except as otherwise provided in this Chapter, in the event a retirant or beneficiary is employed or re-employed by the City in a position which requires membership, payment of his pension shall be suspended during the period of his employment or re-employment. Upon termination of such

Chapter 10 - Employees Retirement System

employment or re-employment in a position which requires membership, his pension shall be re-computed, and he shall receive the new re-computed pension or his prior pension shall be resumed, whichever is the greater amount.

(Rev. 01-07-1985)

53. DEFINED CONTRIBUTION PLAN (DCP)

The Employees Retirement System Board of Trustees are vested with the power and authority to administer, manage and operate the Defined Contribution Plan, and to construe and make effective the provisions of this Chapter

(Rev. 11-06-2000)

54. The following groups of Employees are eligible to participate in the Plan:

Classified & Exempt, AFSCME, MAP, TCOA, TFSA, and TPOA.

(Rev. 08-20-2007)

55. Contribution Provisions. – The City shall contribute as follows:

The City shall contribute on behalf of each Participant (a)% of earnings for the Plan Year. Each Participant is required to contribute (b)% of earnings for the Plan Year as a condition of participation in the Plan. A Participant shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

	<u>(a) – Employer</u>	<u>(b) – Employee</u>
<u>Classified & Exempt:</u>		
(Hired before 01/01/2004)	12%	4%
(Hired after 01/01/2004)	11%	4%
(Hired after 01/01/2005)	10%	4%

(Rev. 08-20-2007)

American Federation of State, County, and Municipal Employees (AFSCME):

(Hired prior to 02/16/1998)	12%	4%
(Hired after 02/16/1998)	11%	5%
(Hired after 11/17/2003)	10%	5%

(Rev. 02-02-2004)

Michigan Association of Police (MAP):

(Hired prior to 12/21/1998)	12%	4%
(Hired after 12/21/1998)	11%	5%
(Hired after 02/07/2005)	10%	5%

(Rev. 08-20-2007)

Chapter 10 - Employees Retirement System

Troy Fire Staff Officers Association (TFSOA):

(Hired prior to 07/01/1997)	13%	3%
(Hired after 07/01/1997)	11%	5%
(Hired after 07/01/2006)	10%	5%
(Rev. 08-20-2007)		

Troy Police Officers Association (TPOA):

(Hired after 02/15/2000)	11%	5%
(Hired after 10/17/2005)	10%	6%
(Rev. 08-20-2007)		

Troy Command Officers Association (TCOA):

(Hired after 10/17/2005)	12%	4%
(Rev. 03-01-2004)		

56. Voluntary Contributions.

Each Participant may make voluntary (unmatched), after-tax contributions, subject to the limitations of Section 4.05 and Articles V and VI of the Plan.

(06-07-1999)

57. Vesting Provisions.

The City hereby specifies the following vesting schedule:

Each Participant who transfers from the Defined Benefit Plan shall be 100% percent vested.

For all other Participants the following vesting schedule will apply:

<u>Years of Completed Service</u>	<u>Percent Vested</u>
Three	50%
Four	75%
Five	100%
(06-07-1999)	

58. Loan Provisions.

Loans are not permitted under the Plan.

(06-07-1999)

59. Disability Pension.

Chapter 10 - Employees Retirement System

Participants in the DCP shall also participate in a disability plan equivalent to the defined benefit disability plan as set forth in the retirement ordinance. The City's liability for the disability benefit shall be offset by (1) an amount which may be payable pursuant to the workers' compensation act, if applicable, and (2) by the lifetime annuity value of the employee's 401 (a) defined contribution retirement account, determined as of the effective date of the employee's disability-related separation from service.

Defined contributions shall include all contributions and income accumulated in the plan account whether derived by the contributions made by the employee or employer, including any amounts transferred into the plan. While the employee is receiving disability benefits or is receiving workers' compensation the City shall contribute the employer rate as contained in the ordinance of the disabled employee's taxable wage for deposit in the DCP for the employee's benefit.

(06-07-1999)

60. Non-Duty Death Provision.

Participants in the DCP shall also be covered in the event of death including non-duty death with a benefit equivalent to the defined benefit plan as set forth in the retirement ordinance. The City's liability for a death benefit shall be off-set by (1) an amount which may be payable pursuant to the workers' compensation act, if applicable, and (2) by the lifetime annuity value of the employee's 401 (a) defined contribution retirement account, determined as of the effective date of the employee's death.

(06-07-1999)

61. Voluntary Separation Incentive Program for Retirement.

In order to address significant budget short falls for the 2009 fiscal year, on November 10, 2008, the Troy City Council approved a limited Voluntary Separation Incentive Program for those employees eligible to retire as of December 31, 2008 and who retire between January 1, 2009 and February 28, 2009. For those employees who satisfactorily complete all requirements for the Voluntary Separation Incentive Program (City Council Resolution 2008-11-331), the definition of credited service, as found in Section 1 (F) is modified to allow for one week of additional credited service for each full year of the employee's service as of December 31, 2008, as well as a one time lump sum payment in the amount of one week of 2008 base salary for each full year of the employee's service as of December 31, 2008. This lump sum payment is not included in the employee's Final Average Compensation, as defined in Section 1 (H).

(01-26-2009)

EXHIBIT 2



INTEGRITY * RESPECT * LAWS AND THE CONSTITUTION * ACCOUNTABILITY * PROBLEM SOLVING * PROFESSIONALISM

Copy - FILE
Capt Resmond
TPOA GEISE
Lois Blum - City Atty
P. SEARS - HR

MEMORANDUM

DATE: January 2, 2013

TO: City of Troy Retirement Board

FROM: Gary G. Mayer, Chief of Police

RE: Retirement Request for Todd Michael

Todd Michael was hired as a Police Officer on February 23, 1987. On March 17, 2009 he was relieved of duty pending the outcome of an internal investigation. Mr. Michael received treatment for medical conditions in 2000, 2001, and also in 2009. Due to the serious and cerebral nature of this medical treatment, the City of Troy sent Mr. Michael for a neuropsychological examination to ensure fitness for duty before allowing him to serve as a police officer. This was done in accordance with the Troy Police Officers Association's Collective Bargaining Agreement. On December 7, 2009 Todd Michael was evaluated and the neuropsychologist determined that he was NOT medically fit for duty as a Police Officer. Following the CBA, Mr. Michael was sent for a second opinion. In an opinion issued on August 12, 2010 the second professional concurred with the opinion that Todd Michael was NOT psychologically fit for duty as a Police Officer.

Under Chapter 10, Section 7.1B, a department head is authorized to file an application on behalf of a TPOA member for a disability retirement, as long as the TPOA member is in the employ of the City; has at least 5 years of credited service, and is totally and permanently incapacitated for employment in the City of Troy because of disease/personal injury.

Todd Michael is in the Defined Contribution Plan.

I am respectfully requesting that the Retirement Board approve a "Disability Retirement" for Todd Michael.



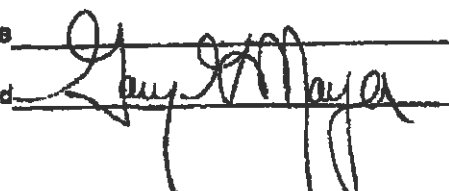
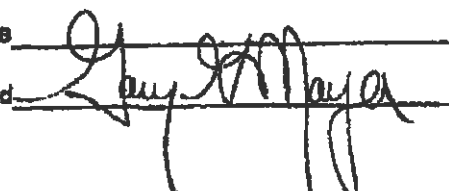
Retirement Request

Employee Number
Name
Birthdate Sex ☒ M ☐ F
Social Security Number

Address
City
State/Province
Postal Code

Spouse Name
Spouse Birthdate Sex ☐ M ☐ F
Spouse Social Security Number

I hereby request retirement. My last day of work is planned for:

Signature 
Approved 

Date 1-2-2013

EXHIBIT 3

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

TROY POLICE OFFICERS
ASSOCIATION (TPOA),

PLAINTIFF

v.

Case No 12-125981-CL
Hon: Martha D. Anderson

CITY OF TROY and the
CITY OF TROY ACT 78
CIVIL SERVICE COMMISSION,

DEFENDANTS

PIERCE, FARRELL, TAFELSKI & WELLS P.L.C.
M. Catherine Farrell (P35248)
Attorney for Plaintiff
2525 S. Telegraph Ste 100
Bloomfield Hills, Mi 48302
(248) 852-1365
Catherine@farrellesq.com

CITY OF TROY ATTORNEY'S OFFICE
Lori Grigg Bluhm (P46908)
Attorney for Defendants Troy and
Act 78 Civil Service Commission
500 W. Big Beaver Rd.
Troy, MI 48084-5254
(248) 524-3320
Bluhm1g@troymi.gov

ORDER

At a session of said Court held in
Oakland County, Michigan

On this December 5, 2012

Present: HONORABLE MARTHA D. ANDERSON,
Circuit Court Judge

This matter having come before the Court pursuant to Plaintiff's Motion for Summary Disposition and Defendants' Motion for Summary Disposition pursuant to MCR 2.116 (C) (4), (7), (8), (9) and (10) and Supporting Briefs, Responsive Pleadings including Response Briefs and Reply Briefs, and the Court being otherwise fully advised in the premises including through oral argument:

NOW THEREFORE:

IT IS HEREBY ORDERED that the Plaintiff's Motion for Summary Disposition is GRANTED and the Defendants' Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED THAT Defendant Troy Act 78 Civil Service Commission is ORDERED to hear the case of Officer Todd Michael forthwith according to their promulgated rules and procedures.

IT IS FURTHER ORDERED that this Court does not maintain jurisdiction.

IT IS FURTHER ORDERED, pursuant to MCR 2.602(A)(3), this resolves the last pending claim and closes the case.


Honorable Martha D. Anderson
Circuit Court Judge

EXHIBIT 4



Agenda

Employees' Retirement System Board Meeting

January 9, 2013 at 12:00 PM
Conference Room C

Troy City Hall
500 West Big Beaver
Troy, Michigan 48064
(248) 524-3330

Roll Call

Minutes from the December 12, 2012 Meeting

Request for Closed Session

Suggested Resolution

Resolution #2013-01-

Moved by

Seconded by

BE IT RESOLVED, That Troy Employees Retirement System Board of Trustees SHALL MEET in Closed Session, as permitted by MCL15.268(h) (MCL15.243(g)).

Yes:

No:

Retirement Requests

Name	Todd Michael
Pension Program	DC
Retirement Date	1/19/13
Department	Police
Service Time	22 yrs, 11 mo

Suggested Resolution

Resolution #2013-01-

Moved by

Seconded by

BE IT RESOLVED, That Troy Employee Retirement System Board of Trustees approves the disability retirement request filed by Police Chief Gary Mayer on behalf of Todd Michael, pursuant to City of Troy Ordinance Chapter 10, Section 7.1B, on the basis that all of the following have been established:

- 1) Todd Michael is in the employ of the City;
- 2) Todd Michael has 5 or more years of credited service;
- 3) Todd Michael is totally and permanently incapacitated for duty in the employ of the City by reason of a personal injury or disease.



Agenda

Employees' Retirement System Board Meeting

January 9, 2013 at 12:00 PM
Conference Room C

Troy City Hall
500 West Big Beaver
Troy, Michigan 48064
(248) 524-3330

BE IT FURTHER RESOLVED, That the Troy Employee Retirement System Board of Trustees relies on the three independent reports of neuropsychological examinations of Todd Michael (12/7/2009 report of Dr. Firoza Van Horn; 3/10/2010 report of Dr. Linas A. Bieliauskas; and 8/12/2010 report of Dr. Bradley G. Sewick), which have satisfied the Retirement Board that all of the following are true:

- 1) Todd Michael is mentally or physically totally incapacitated for duty in the employ of the City;
- 2) Todd Michael's incapacity will probably be permanent;
- 3) Todd Michael should be retired.

Yes:

No:

Other Business

Status of Evaluations for the Responses to RFI for Investment Consultant

Investments

Public Comment

Adjourn

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TROY POLICE OFFICERS
ASSOCIATION (TPOA),

PLAINTIFF,

Case No 2013-

CL

v.

Hon:

CITY OF TROY and the
CITY OF TROY RETIREMENT BOARD,

DEFENDANTS.

M. Catherine Farrell (P35248)
Attorney for Plaintiffs
Pierce, Farrell, Tafelski & Wells P.L.C.
2525 S. Telegraph Ste 100
Bloomfield Hills, Mi 48302
248 852 1365
Catherine@farrellesq.com

**MOTION FOR A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE**

Now comes the Plaintiff, the Troy Police Officers Association, TPOA, by and through its counsel, Pierce, Farrell, Tafelski & Wells, PLC and for its Motion for Temporary Restraining Order and Order to Show Cause state as follows:

1. The Plaintiff is the exclusive collective bargaining agent for all uniform police office below the rank of sergeant employed by the Defendant City of Troy.
2. The City of Troy is a public employer and is a party to a collective bargaining agreement with the Plaintiff, the Troy Police Officers Association.

3. The City of Troy Employee Retirement Board is an authorized board of the City of Troy and is the independent Board which hears and processes retirement requests from employees employed by the City of Troy.
4. Chapter 10 of the Troy City Code sets forth in detail the rights duties and obligations of the Retirement Board and the employees employed by the City of Troy. A copy of Chapter 10 of the Troy City Code is attached thereto as Exhibit 1.
5. The City of Troy and the City of Troy Retirement Board are located in Oakland County.
6. Michigan Court Rules 3.310(B) provides jurisdiction to this court to issue a temporary restraining order "if immediate and irreparable injury, loss or damage will result to the applicant from the delay required to effect notice..."
7. On March 30, 2012, Plaintiff filed a lawsuit seeking among other things an Order of Mandamus directing/ordering the City of Troy and the City of Troy Pubic Act 78 Civil Service Commission to hear the case of police officer Todd Michael, a member of the TPOA.
8. The right to an Act 78 Commission is a step in the TPOA grievance procedure which is embodied in the collective bargaining agreement.
9. Based upon a communication from the Defendant City of Troy HR Director the Act 78 Commission refused to hear the case of Officer Todd Michael.
10. Upon invitation of the Act 78 Commission, on or about January 19, 2012, that it would hear the case if ordered to do so by a court of competent jurisdiction, the Plaintiff filed a

lawsuit seeking an order from a court of competent jurisdiction to order the Act 78 Commission to hear the case.

11. On or about December 5, 2012, the Honorable Martha D. Anderson heard the case and issued a bench decision ordering the Act 78 Commission to hear the case of Officer Todd Michael.
12. On or about December 27, 2012, the City of Troy appealed the decision of the court which ordered the Act 78 Commission to hear the case regarding Officer Todd Michael. The appeal number in the Court of Appeals is 314013.
13. By a memorandum dated January 2, 2013, the Chief of Police, Gary Mayer unilaterally made a request of the City of Troy Retirement Board to hear his request for the forced retirement of Officer Todd Michael. Attached hereto as Exhibit 2 is a copy of the January 2, 2013 Memorandum, and partially completed retirement request.
14. Chief of Police Gary Mayer is a named Defendant in the Federal litigation involving Officer Todd Michael.
15. The forced retirement is an attempt to avoid and subvert the order of this court for the Act 78 Commission to hear the matter involving Officer Todd Michael. The TPOA and Officer Todd Michael, as an employee and as a member of the TPOA bargaining unit, will be irreparably damaged by the unilateral effort to force Officer Todd Michael into a forced retirement.
16. Once Officer Michael is forced into retirement he will no longer be a member of the TPOA; he will not be entitled to be represented by the TPOA in matters pertaining to his

employment; he will no longer be subject to the terms and conditions of the existing collective bargaining agreement, and he will no longer be entitled to a hearing as a retired officer before the Act 78 Civil Service Commission.

WHEREFORE the Plaintiff, as the exclusive collective bargaining agent for uniform police officers below the rank of sergeant, respectively requests the court issue an ex parte temporary restraining order, restraining the Defendant City of Troy and the City of Troy Retirement Board from processing any request by chief of police Gary Mayer to effectuate the involuntary retirement of Officer Todd Michael until there is a full and complete hearing on the merits of the Act 78 Commission case, and an order to show cause why a preliminary injunction should not issue.

Respectfully submitted,

Pierce, Farrell, Tafelski & Wells, PLC

Dated: January 8, 2012

By: /s/ M. Catherine Farrell
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TROY POLICE OFFICERS
ASSOCIATION (TPOA),

PLAINTIFF,

Case No 2013- 131524
CL

v.

Hon:

CITY OF TROY and the
CITY OF TROY RETIREMENT BOARD,

DEFENDANTS.

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**BRIEF IN SUPPORT OF AN TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE**

As noted in the attached Verified Complaint and Motion for a Temporary Restraining Order, the Plaintiff received notice on January 7, 2013 that on January 9, 2013 the Chief of Police was attempting to involuntarily retire Officer Todd Michael who is a member of Plaintiff's bargaining unit and was the subject of an earlier matter decided by this court on December 5, 2012. A copy of the December 5, 2012 Order is attached as Exhibit 3.

In addition, the Retirement Board planned to conduct the retirement hearing in secret, as indicated by the attached Agenda (Exhibit 4). Officer Michael is not even listed on the "distribution list", meaning that, but for his union, he would have received no notice of the hearing to involuntarily retire him.

Furthermore, the Defendant Board specifically planned, at the instigation of the Chief of Police, to order the retirement based on a procedure which is directly contrary to the requirements of the City of Troy Code and Ordinances. Section 10 of that Code permits retirement based on a disability only:

"after a medical examination of the member made by or under the direction of a Medical Committee consisting of 2 physicians, 1 of whom shall be named by the Board, and *1 by the member*, the said Medical Committee reports to the Board, in writing,(1) that the member is mentally or physically totally incapacitated..." Troy Code Section 10, Section 7.1A.

But in this case, the Board explicitly planned to rely on previously-existing statements of Neuropsychologists, not operating as a Medical Committee and not including a physician appointed by the member. Thus, unless this Court enters a temporary restraining order, the Retirement Board will railroad through an involuntary retirement in a secret session using improper medical reports, all the while denying this police officer the due process and right to appoint a physician of his own choosing, which are explicitly and unambiguously provided by the very Code which entitled the Retirement Board to exist.

The earlier matter in this Court was a Motion for Summary Disposition seeking an order of mandamus to compel the Act 78 Commission to hear the matter involving Officer Michael's termination. On December 5, 2012, this court ordered the Act 78 Commission to hear the Todd

Michael matter. It is important to note that the Defendants in that case, the City of Troy and the Act 78 Commission have declined to follow the order of this Court. Their alternative was to file a claim of appeal which will be heard by the Court of Appeals in due course. The attempt to involuntarily retire officer Michael will circumvent and subvert the December 5 Order of this Court, and will render the Court of Appeals case moot since retirees are not covered by the Plaintiff's collective bargaining agreement.

The standard requirement for a temporary restraining order or injunctive relief is a four factor analysis:

(1) demonstration that the applicant will suffer irreparable harm if a preliminary injunction is not granted;

(2) the likelihood the applicant will prevail on the merits;

(3) whether the harm to the applicant in the absence of the stay outweighs the harm to the opposing party if a stay is granted;

(4) harm is any to the public interest if the injunction issues.

City of Detroit v Salaried Physicians Professional Association 165 Mich App 142, 418 NW2d 679 (1987).

Irreparable Harm

As it relates to the instant matter, absent a temporary restraining order stopping the City of Troy Retirement Board from involuntarily retiring Officer Michael, the Plaintiff, TPOA will no longer have the right to enforce the collective bargaining agreement for the benefit of Officer Michael as retirees are not covered under the collective bargaining agreement. Further, the action

will deny Officer Michael the right to a full and fair hearing before the Act 78 Commission to challenge the defendant City of Troy's assertion that he is totally and permanently incapacitated for employment with the City of Troy.

The Defendant City's own former long term disability carrier, the Standard, issued a detailed letter indicating that its independent neuropsychologist review of the data, found officer Michael was not totally and permanently incapacitated and he was able to function as a police officer. The Defendants are making every effort to be rid of Officer Michael without any independent or due process review of the claim that he is disabled.

Likelihood of Success on the Merits

The procedure which the Retirement Board proposes to employ is directly contrary to the City Code. It is unlikely that the actions by the Chief of Police and the Board will withstand judicial scrutiny, and there is a substantial likelihood that, once seen in the light of day, the machinations of the Chief and the Board will be rejected.

Moreover, there is a high likelihood that the Court of Appeals will indeed uphold the decision of this Honorable Court to order the Act 78 Commission to hold a hearing. This eleventh hour secretive effort to force the involuntary retirement of Officer Michael should be stopped as it will circuitously subvert this Court's prior decision since, if officer Michael is retired he will not be entitled to an Act 78 hearing, which is an option for employees under the parties collective bargaining agreement.

Balancing the Harms

Plaintiff's ability to protect its member will be irreparably harmed as Officer Michael will no longer have the benefit of his collective bargaining agent to fully represent his interests under the collective bargaining agreement.

The Defendant City of Troy is trying, by sleight of hand and a secretive effort, to eliminate its "problem" (i.e., this Court's Order) by forcing the involuntary retirement of Officer Michael. For some unknown reason, Defendant City is unwilling to have a open, full and complete hearing regarding the status of Officer Michael. In pleadings before this very Court, the City has vacillated between Officer's Michael's status, stating in one breathe that he was an employee, and in another that he was terminated. Now they wish to assign him a third status, against his will and without due process, in order to avoid the hearing ordered by this Court. In effect, the Defendant City of Troy is seeking to use the City of Troy Retirement Board as its own hatchet man to avoid the full and fair hearing to which Officer Michael is entitled. The Court should not support such action. Balancing the Harm weighs heavily in favor of Plaintiff.

Public Interest

There is no harm in permitting the Plaintiff to fully enforce the collective bargaining agreement and have a full and fair hearing regarding the status of Officer Michael. If Officer Michael is deemed to be able to return to work he will; if he is deemed by the Act 78 Commission to not be able to return to work, then there will be sufficient opportunity to deal with that result. However, to attempt this end run around, Officer Michael's right under the collective bargaining agreement to have a full and fair hearing is not in the public interest. When

a municipality attempts to avoid its statutory and collective bargaining obligations by surreptitiously attempting to force an involuntary retirement upon an employee rather than have a full hearing on the merits of the case, the public interest is not served.

For all the foregoing reasons, the Plaintiff, The Troy Police Officers Association respectfully requests the Court grant its motion for a Temporary Restraining Order and Order to Show Cause to stop the Chief of Police Gary Mayer from furtively involuntarily retiring office Todd Michael.

Respectfully submitted,

Pierce, Farrell, Tafelski & Wells, PLC

Dated: January 8, 2012

By: /s/ M. Catherine Farrell

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